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DATUK HASANAH ABDUL HAMID v. SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
NORDIN HASSAN J
[ORIGINATING SUMMONS NO: WA-24-70-09-2018]
B 26 OCTOBER 2018

CONSTITUTIONAL LAW: *Fundamental liberties – Right of detained person – Right to counsel – Right to counsel during remand period – Whether to be accorded immediately after arrest – Suspension of right to counsel pursuant to sub-ss. 28A(8) and (9) of Criminal Procedure Code ('CPC') – Suspension of right to counsel to ensure investigations carried out without impediments – Whether could be granted within reasonable time after arrest – Whether sub-ss. 28A(8) and (9) of CPC ultra vires art. 5(3) of Federal Constitution – Whether sub-ss. 28A(8) and (9) of CPC apply equally to any arrested person – Whether there was infringement of art. 8(1) of*
C *Federal Constitution*

The applicant filed an originating summons for a declaration that sub-ss. 28A(8) and (9) of the Criminal Procedure Code ('CPC') are *ultra vires* the Federal Constitution wherein the subsections were said to violate the fundamental liberties guaranteed by art. 5(3) of the Federal Constitution
D ('FC'). The applicant was arrested by the first respondent and, pursuant to sub-s. 28A(2) of the CPC, she was informed of her right to consult her counsel. However, the right was suspended pursuant to sub-ss. 28A(8) and (9) of the CPC. The applicant argued that a person under remand is a person under arrest and a total denial of access to legal representation throughout the
E period of detention is in breach of art. 5(3) of the FC.

Held (dismissing application with no order as to costs):

(1) Subsections 28A(8) and (9) of the CPC allow the applicant's right to counsel to be suspended or put on hold in order to ensure the
F investigation against the applicant could be carried out smoothly without any impediments. The first respondent's action to suspend the applicant's right to counsel for six days during the remand period was in accordance with sub-s. 28A(8) and (9) of the CPC. It was also in compliance with art. 5(1) of the FC. (paras 13 & 14)

(2) Although it was not disputed that an arrested person must be given the
G right to consult counsel of his choice as enshrined in art. 5(3) of the FC, the article does not state that the right to counsel must be given immediately after a person is arrested. The right to counsel may not be granted immediately after arrest if it impedes the investigation and it could be granted within reasonable time after his arrest. Further, there
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was nothing to show that the applicant was remanded for any collateral purpose. The applicant was allowed to consult her counsel before the remand proceedings and be defended by counsel of her choice and hence, her right to counsel was not 'ineffective or illusory'. There was no violation of the rights to counsel under art. 5(3) of the FC. (paras 17, 18, 26, 27, 34 & 35)

(3) In the circumstances, sub-s. 28A(8) and (9) of the CPC do not infringe art. 5(3) of the FC. Both subsections do not envisage total denial of right to counsel but rather postponement of the right to avoid any impediment to the investigation. Subsections 28A(8) and (9) of the CPC also apply equally to any arrested person. The provisions are not discriminatory in nature and therefore, do not infringe art. 8(1) of the FC. The subsections apply to all arrested persons and hence, are valid and good law. (paras 36, 37 & 39)

Case(s) referred to:

Bird Dominic Jude v. PP [2014] 4 CLJ 133 FC ***(refd)***
Hashim Saud v. Yahaya Hashim & Anor [1977] 1 LNS 32 FC ***(foll)***
Lee Mau Seng v. Minister For Home Affairs, Singapore & Anor [1971] 1 LNS 58 HC ***(refd)***
Leap Modulation Sdn Bhd v. PCP Construction Sdn Bhd [2018] 1 LNS 816 CA ***(refd)***
Mohamad Ezam Mohd Noor v. Ketua Polis Negara & Other Appeals [2002] 4 CLJ 309 FC ***(dist)***
Moti Bai v. The State AIR 1954 Rajasthan 241 ***(refd)***
Ooi Ah Phua v. Officer-In-Charge Criminal Investigation Kedah/Perlis [1975] 1 LNS 117 FC ***(foll)***
Periasamy Sinnappan v. PP [1996] 3 CLJ 187 CA ***(refd)***
Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(refd)***
Sundar Singh v. Emperor AIR 1930 Lahore 945 ***(refd)***

Legislation referred to:

Criminal Procedure Code, s. 28A(2)(b), (3), (4), (8), (9)
Federal Constitution, arts. 5(1), (3), 8(1)
Internal Security Act 1960, s. 73(1)

For the applicant - Shaharuddin Hj Aziz, Mohd Khairul Azam Aziz & Nur Aifaa Zain; M/s Azam Aziz Shaharuddinali & Co
For the respondents - Norzilawati lzhani Zainal @ Zainol; SFC

Reported by S Barathi

JUDGMENT

Nordin Hassan J:

Introduction

[1] Applicant in this case has filed an originating summons for a declaration that subsection 28A(8) and 28A(9) of the Criminal Procedure Code are *ultra vires* the Federal Constitution.

[2] The grounds for seeking this declaration is that both subsections abovementioned violate the fundamental liberties guaranteed by art. 5(3) and art. 8(1) of the Federal Constitution.

The Relevant Laws

[3] Section 28A of the Criminal Procedure Code which includes sub-s. 28A(8) and 28A(9) is reproduced here for easy reference.

Subsection 28A

Rights of person arrested

28A(1) A person arrested without a warrant shall be informed as soon as may be of the grounds of his arrest by the police officer making the arrest.

(2) **A police officer shall, before commencing any form of questioning or recording of any statement from the person arrested, inform the person that he may:**

(a) Communicate or attempt to communicate, with a relative or friend to inform of his whereabouts; and

(b) **Communicate or attempt to communicate and consult with a legal practitioner of his choice.**

(3) Where the person arrested wishes to communicate or attempt to communicate with the persons referred to in paragraphs (2) (a) and (b), the police officer shall, **as soon as may be**, allow the arrested person to do so.

(4) Where the person arrested has requested for a legal practitioner to be consulted, the police officer shall allow **a reasonable** time:

(a) for the legal practitioner to be present to meet the person arrested at his place of detention; and

(b) for the consultation to take place.

(5) The consultation under subsection (4) shall be within the sight of a police officer and in circumstances, in so far as practicable, where their communication will not be overheard.

(6) The police officer shall defer any questioning or recording of any statement from the person arrested for a reasonable time until the communication or attempted communication under paragraph 2 (b) or the consultation under subsection (4) has been made.

(7) The police officer shall provide reasonable facilities for the communication and consultation under this section and all such facilities provided shall be free of charge.

(8) **The requirements under subsections (2), (3), (4), (5), (6) and (7) shall not apply where the police officer reasonably believes that:**

(a) compliance with any of requirements in likely to result in:

(i) an accomplice of the person arrested taking steps to avoid apprehension; or

(ii) the concealment, fabrication or destruction of evidence or the intimidation of a witness; or

(b) having regard to the safety of other persons the questioning or recording of any statement is so urgent that it should not be delayed.

(9) Subsection (8) shall only apply upon authorisation by a police officer not below the rank of Deputy Superintendent of Police.

(10) The police officer giving the authorisation under subsection (9) shall regard the grounds of belief of the police officer that the conditions specified under subsection (8) will arise and such record shall be made as soon as practicable.

(11) The investigating officer shall comply with the requirements under subsections (2), (3), (4), (5), (6) and (7) as soon as possible after the conditions specified under subsection (8) have ceased to apply where the person arrested is still under detention under this section or under section 117. (emphasis added)

[4] Article 5(3) and art. 8(1) of the Federal Constitution are the following:

(i) **Article 5(3):**

Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

(ii) **Article 8(1):**

All persons are equal before the law and entitled to equal protection of the law.

The Brief Facts

[5] Based on the affidavits filed in this application together with the documents exhibited thereto, the material facts are as follows:

(i) On 28 August 2018, the applicant was arrested by the first respondent and pursuant to the sub-s. 28A(2) of the Criminal Procedure Code ('CPC'), she was informed of her right to consult her counsel by Assistant Superintendent Nor Asikin binti Ramly.

(ii) However, upon application made by the investigation officer Assistant Superintendent Mohamad Khairulnizam bin Sulaiman, to Superintendent Shahrum Nizam bin Baharuddin, the applicant's right to counsel was suspended pursuant to subs. 28A(8) and (9) of the CPC. The reasons given by the investigation officer can be found at para. 5 of his application which are as follows:

A 5. Sebagai pegawai penyiasat bagi kes ini, saya berpendapat bahawa sekira hak di bawah Seksyen 28A(2)(a) dan (b) diberikan kepada OTT dipercayai siasatan kes ini akan terjejas berdasarkan alasan-alasan berikut: (tandakan/ diruangan berkenaan)

5.1 Rakan sejenayah OTT mungkin akan melarikan diri atau mengambil langkah-langkah untuk mengelakkan tangkapan terhadap mereka. ☐ /

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5.2 Mungkin akan menyebabkan penyembunyian/ fabrikasi/atau pemusnahan keterangan/ dokumen. ☐ /

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5.3 Mungkin menyebabkan saksi-saksi terancam atau merasa takut. ☐ /

5.4 Pertanyaan/rakaman pernyataan daripada OTT adalah mustahak dan perlu diambil tanpa melengah-lengah masa. ☐ /

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(iii) On 29 August 2018, the applicant was brought before the Magistrate at Magistrate's Court, Putrajaya for the remand order application.

(iv) Before the remand proceedings commenced, the applicant was given the opportunity to consult her counsel who was present in court.

E (v) Thereafter, having heard the submission by Deputy Public Prosecutor and counsel for the applicant, the Magistrate granted a remand order for a period of five days and later it was extended for another one day.

(vi) On 3 September 2018, the applicant was released from the custody of the first respondent.

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The Applicant's Submission

[6] The applicant's counsel *inter alia* submits that sub-ss. 28A(8) and 28A(9) constitute a total denial of right to counsel and as such it infringed art. 5(3) of the Federal Constitution. It was argued that a person under G remand is a person under arrest and total denial of access to legal representation throughout the period of detention is in breach of art. 5(3). The case of *Mohamad Ezam Mohd Noor v. Ketua Polis Negara & Other Appeals* [2002] 4 CLJ 309 was quoted to support this contention.

[7] In connection to this issue, counsel for the applicant further submits H that Tun Suffian's views that the right to counsel can be suspended if it impedes the police investigation in the Federal Court case of *Ooi Ah Phua v. Officer-In-Charge, Criminal Investigation Kedah/Perlis* [1975] 1 LNS 117; [1975] 2 MLJ 198, is outdated and should not be followed.

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[8] In his oral submission, counsel for the applicant also placed heavy reliance on an Indian case of *Moti Bai v. The State* AIR 1954 Rajasthan 241 to support the argument that the right to counsel begins from the moment of arrest.

The Respondents' Submission

[9] On the contrary, the respondents' contention can be summarised that sub-ss. 28A(8) and 28A(9) are not provisions which deny totally the applicant's right to counsel but to suspend temporarily in order to ensure that the investigation will not be impeded. As such, the provisions do not infringe art. 5(3) or art. 8(1) of the Federal Constitution.

Decision Of This Court

[10] In considering the issue of constitutionality of any statutory provision, and in this case sub-ss. 28A(8) and 28A(9) of the CPC, this court is guided by principles of law *inter alia* that there is a strong presumption in favour of the constitutionality of provisions in a statute and for the person who challenges the said provision to prove that the provision is unconstitutional.

[11] On this issue, it is instructive to refer to the landmark case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561, where Zainun Ali FCJ at p. 560 (CLJ); p. 594 (MLJ) said this:

> [93] *The preliminary position is that there is always a strong presumption in favour of the constitutionality of provisions in a statute. This is premised on the principle that Parliament cannot be presumed to intend an unconstitutional* action. The burden is upon him who challenges the provision to show that they are unconstitutional (*Public Prosecutor v. Pung Chen Choon* [1994] 1 MLJ 566, *Ooi dean Thong c Anor v. (Public Prosecutor* [2006] 3 MLJ 389, *Public Prosecutor v Azmi bin Sharom* [2015] 6 MLJ 751; [2015] 8 CLJ 921). The court's function is merely to test the legality of an action against principles and standards established by the Constitution. *Unless it is found that there has been a clear transgression of constitutional principles, the court would refrain from declaring the law as legislated by the Legislature to be invalid.*

[12] Reverting to the present case, the crux of the applicant's contention is that the applicant was not accorded the right to counsel by the first respondent during the remand period of six days and this infringed art. 5(3) of the Federal Constitution.

[13] At the outset, the law allows the applicant's right to counsel to be suspended or put on hold in order to ensure the investigation against the applicant can be carried out smoothly without any impediments. This is provided under sub-ss. 28A(8) and 28A(9) of the CPC. The exception to accord the right to counsel immediately after arrest under these provisions has been explained in Parliament as shown in the Hansard dated 13 July 2006 which states amongst others as follows:

Selain itu, Jawatankuasa juga mengehendaki pihak polis memberi kemudahan kepada orang kena tangkap untuk menghubungi ahli keluarga atau rakannya selepas dia ditangkap. Ini akan membolehkan mereka yang terdekat untuk mengetahui tempat beradanya orang kena tangkap. Oleh itu hak orang kena tangkap untuk menghubungi seorang peguam atau ahli keluarga atau rakannya hendaklah dipatuhi dan tidak boleh diabaikan kecuali dalam keadaan-keadaan yang tertentu sahaja.

Pengecualian hanya boleh diberi oleh seorang anggota polis yang berpangkat tidak kurang daripada Timbalan Penguasa Polis dengan izin, DSP dalam tiga keadaan, iaitu:

(i) *jika orang kena tangkap diberi kemudahan tersebut rakan jenayah orang kena tangkap itu akan mengambil langkah-langkah untuk mengelak dari ditangkap*;

(ii) *menyembunyi, mereka keterangan, dengan izin fabricate, atau pun membinasa keterangan berkaitan kes atau mengugut saksi-saksi*; dan

(iii) *dengan mengambil kira keselamatan orang lain, penyoalan atau perakaman sesuatu pernyataan adalah sangat diperlukan dan tidak boleh ditangguh, dengan izin 'having regard to the safety of other person, the questioning or recording of any statement is so urgent that if should not be delayed*'.

[14] Here, the first respondent's action to suspend the applicant's right to counsel for six days during the remand period is in accordance with sub-s. 28A(8) and 28A(9) of the CPC. This is also in compliance with art. 5(1) of the Federal Constitution which provides:

No person shall be deprived of his life or personal liberty **save in accordance with law.**

[15] In the present application, the applicant's contention that sub-ss. 28A(8) and 28A(9) are unconstitutional hinges substantially on the infringement of art. 5(3) of the Federal Constitution which reproduced again here as follows:

Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and **shall be allowed to consult and be defended by a legal practitioner of his choice.**

[16] For the purpose of the present application, the pertinent contents of art. 5(3) is the phrase:

where a person is arrested he ... shall be allowed to consult ... a legal practitioner of his choice.

[17] Here, it is not disputed that an arrested person must be given the right to consult counsel of his choice as enshrined in art. 5(3) of the Federal Constitution. However, the issue of contention is whether an arrested person must be accorded the right to counsel immediately after arrest.

[18] In this regard, art. 5(3) does not state that the right to counsel must be given immediately after a person is arrested. As such, it raises a contentious issue as to whether such right can be suspended when the arrested person is under remand.

[19] In determining this issue, it is important to make reference to the legal pronouncement by the apex court regarding the same matter.

[20] Tun Suffian LP, in the case of *Ooi Ah Phua v. Officer In Charge Criminal Investigation Kedah/Perlis (supra)*, after having considered *inter-alia* Article 5(3) of the Federal Constitution and the decision of Justice Modi in *Moti Bai v. The State*, said this:

> With respect I agree that the right of an arrested person to consult his lawyer begins from the moment of arrest, *but I am of the opinion that that right cannot be exercised immediately after arrest. A balance has to be struck between the right of the arrested person to consult his lawyer on the one hand and on the other the duty of the police to protect the public from wrongdoers by apprehending them and collecting whatever evidence exists against them.* The interest of justice is as important as the interest of arrested persons and it is well-known that criminal elements are deterred most of all by the certainty of detection, arrest and punishment.

[21] This decision by Tun Suffian was concurred by two other panels of the case, Lee Hun Hoe CJ (Borneo) and Wan Sulaiman FJ.

[22] The principle of law in *Ooi Ah Phua* was reiterated and accepted by the Federal Court in *Hashim Saud v. Yahaya Hashim & Anor* [1977] 1 LNS 32; [1977] 2 MLJ 116, where Raja Azlan Shah FJ (as he then was) had this to say:

> As in Canada we have a Bill of Rights. However the position in this country seems to be that the pre-trial right of an arrested person to be allowed to consult a lawyer is merely one particular manifestation of the general right to be allowed to consult and be defended by a legal practitioner of his choice. (Art. 5(3) of the Constitution). *Such right start right from the day of his arrest but it cannot be exercised immediately after arrest if it impedes police investigation or the administration of justice; see Ooi Ah Phua v. Officer-in-Charge Criminal Investigation, Kedah/Perlis.*

The judge went on and said this:

> **The correct view is that as stated by this court in *Ooi Ah Phua*'s *supra* case.**

[23] As of to date, there is no other decision by the apex court that contradict the decision in *Ooi Ah Phua* and *Hashim Saud*'s *case*. Here, I have no reason to depart from the decisions of these apex courts and bound to follow the principle which has been laid down on the principle of *stare decisis*.

[24] As reminded by the Court of Appeal in *Periasamy Sinnappan & Anor v. Public Prosecutor* [1996] 3 CLJ 187; [1996] 2 MLJ 557:

> *We may add that it does not augur well for judicial discipline when a High Court judge treats the decision of the Supreme Court with little or no respect in disobedience to the well-entrenched doctrine of stare decisis.* We trust that the occasion will never arise again when we have to remind High Court judges that they are bound by all judgments of this court and of the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein.

[25] Likewise in the Court of Appeal case of *Leap Modulation Sdn Bhd v. Pop Construction Sdn Bhd* [2018] 1 LNS 816; [2018] MLJU 773 where David Wong JCA said this:

> [29] There is no two ways about it here. *The concept of stare decisis is applicable to the case at hand as the factual matrix there in our view is the same as here and could not be distinguished in anyway. We are thus bound by it, irrespective what out view may be.*
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> [31] *Finally, we reiterate that the importance of the doctrine of stare decisis must not be overlooked.* As Benjamin Cardozo in his treatise, *The Natural of Judicial Process (New Haven and London: Yale University Press* 1021) at page 9-50, says:
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> > It will not do to decide the same questions one way between one set of litigants and the opposite way between another. 'If a group of cases involved the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look at the same judgment today of I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights'. **Adherence to precedent must then be the rule rather than an exception if litigants are to have faith in the evenhanded administration of justice in the Courts.**

[26] In other jurisdiction, on similar issue, Chief Justice of Singapore, Wong Chong Jin in the case of *Lee Mau Seng v. Minister For Home Affairs, Singapore & Anor* [1971] 1 LNS 58; [1971] 2 MLJ 137b explained that the right to counsel can be granted within reasonable time after his arrest. This is what he said:

> ... an arrested person is (under Article 5(3)) beyond a shadow of doubt entitled to this constitutional right granted to him by the authority who has custody of him after his arrest and this right must be granted to him **'within a reasonable time after his arrest'.**

[27] Therefore, this decision is consistent with the decision of our apex courts that the right to counsel may not be granted immediately after arrest if it impedes the investigation.

[28] Similar view was also taken in the case of *Sundar Singh v. Emperor* AIR 1930 Lahore 945 which departed from the decision in *Moti Bai*'s case, where Justice Bhide in *Sundar*'s case explained as follows:

> The right of a prisoner to have access to legal advice must of course be subject to such legitimate restriction as may be necessary in the interest of justice in order to prevent any undue interference with the course of investigation.

[29] Therefore, the principle that the right to counsel of an arrested person can be postponed if it impedes the investigation is also accepted in other jurisdiction.

[30] Clearly, the principle with regard to right to counsel enunciated in *Ooi Ah Phua,* followed in *Hashim Saud*'s *case* is now embodied in the form of statute, which are sub-ss. 28A(8) and 28A(9) of the CPC which is now challenged by the applicant of its constitutionality.

[31] The case of *Mohamad Ezam Mohd Noor v. Ketua Polls Negara & Other Appeals* [2002] 4 CLJ 309 which was relied upon by the applicant can be readily distinguished. The case involved a preventive detention under s. 73(1) of the Internal Security Act 1960 ('ISA 1960') where the detention is without any remand order by the court.

[32] Furthermore, there is no provision under the ISA 1960 which provides legal representation compared with the CPC where sub-ss. 28A(2)(b), 28A(3) and 28A(4) clearly give the arrested person the right to consult a legal practitioner.

This right to counsel is only allowed to be put on hold or postponed temporarily, if it impedes the investigation as empowered under sub-s. 28A(8) and 28A(9) of the Code.

[33] Apart from this, in *Mohamad Ezam*'s *case*, it is the findings of the court that the ISA 1960 was used for a collateral purpose that is to deny the detainees the opportunity to give instructions to their counsel to defend them in several other charges proffered against them. On the facts of this case, the Federal Court concludes that there was a violation of art. 5(3) of the Federal Constitution. As stated by Siti Norma Yaakob FCJ at p. 388 of the case:

> **On the facts of these appeals** before us, I consider that allowing access only after the expiry of their detentions is conduct unreasonable and a clear violation of art. 5(3). It also supports the appellants' contention that denial amounts to *male fide* on the part of the police that the ISA was used for *a collateral purpose. That collateral purpose is demonstrated by the fact that the appellants are facing several charges of being members of an unlawful assembly and that the ISA detentions were used to deny the appellants the right to give instructions to their counsel to defend them in the several charges they face.*

[34] However, the facts in the present application poles apart from *Ezam*'s *case* and there is nothing to show that the applicant was remanded for any collateral purpose. The applicant was even allowed to consult her counsel before the remand proceedings and be defended by counsel of her choice. Therefore, her right to counsel is not 'ineffective or illusory'.

[35] In applying the test to determine any violation of fundamental rights under the Federal Constitution as explained in *Ezam*'s *case* shows that there is no violation of the rights to counsel under art. 5(3) in the present case. As mentioned in *Ezam*'s case at pp. 387 and 388:

> Whilst *I appreciate that a balance must be drawn between the interests of the state on one hand and the interests of the detainees on the other,* it is not unreasonable to expect the police to give priority to their investigations so that the rights of the detainees to seek legal representation will not be unnecessarily denied. In this respect, I am guided by the case of *Dewan Undangan Negeri Kelantan & Anor v. Nordin bin Salleh & Anor* [1992] 1 MLI 697 where our then Supreme Court adopted the test propounded by the Indian Supreme Court in the case of *Smt Manecha Ghandi v. Union of India* AIR [1978] SC 597 when determining whether an impugned legislation violates any fundamental right guaranteed under the Constitution. *The test is that the court should ask itself and consider whether the validity of State action 'directly affects the fundamental rights or its inevitable effect or consequence on the fundamental rights is such that it makes their exercise' ineffective or illusory.*

[36] Based on the grounds alluded to earlier, it is my considered view that sub-ss. 28A(8) and 28A(9) do not infringe art. 5(3) of the Federal Constitution. Both subsections do not envisage total denial of right to counsel but rather postponement of those right to avoid any impediment to the investigation.

[37] Next, sub-ss. 28A(8) and 28A(9) of the CPC apply equally to any arrested person. These provisions are not discriminatory in nature. As such, the provisions do not infringe art. 8(1) of the Federal Constitution which provides:

> All persons are equal before the law and entitled to the equal protection of the law.

[38] On this issue, the Federal Court in the case of *Bird Dominic Jude v. PP* [2014] 4 CLJ 133 at p. 145 explained the test whether a statute is discriminatory in nature in the following words:

> [19] In the present case it is our finding that **s. 56A of the CJA applies to everybody whether a citizen or not.** As long as an accused person is acquitted at the High Court, the Public Prosecutor can apply for a warrant under s. 56A of the CJA. Section 56A of the CJA in **our view is not discriminatory in nature.** On the test as to whether the provision of the statute is discriminatory in nature we would refer to the case of *Datuk Haji Harun Haji Idris v. PP* [1976] 1 LNS 19; [1977] 2 MLJ 155 where Suffian LP had this to say:
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> > With respect we would agree with the Solicitor-General's submission that the first question should ask is, is the law discriminatory, and that the answer should then be – **if the laws is not discriminatory, if for instance it obviously applies to everybody, it is good law …**

[39] Likewise in the present case, as mentioned earlier, sub-ss. 28A(8) and 28A(9) apply to all arrested person and are not discriminatory in nature. As such, they are valid and good law.

Conclusion

[40] Based on the abovementioned reasons, it is the findings of this court that sub-ss. 28A(8) and 28A(9) of the CPC do not violate art. 5(3) and 8(1) of the Federal Constitution and are good law.

[41] As such, the applicant's application *vide* encl. 1 is dismissed with no order as to costs.